

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANGEL MARIA DEJESUS,

Petitioner,

-against-

UNITED STATES

Respondent.
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**ORDER DENYING HABEAS
PETITION**

07 Civ. 5685 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

Petitioner Angel Maria Dejesus brings this pro se petition for habeas corpus pursuant to 28 U.S.C. § 2255, alleging that he is being held in custody in violation of his constitutional rights. Dejesus alleges that he was denied his right to appeal because his counsel failed to follow his instructions to file a notice of appeal, that his sentence should be reduced in light of Lopez v. Gonzalez, 127 S. Ct 625 (2006), and that the Court should reduce his sentence for various other reasons. I deny petitioner's motion for the reasons stated below.

Petitioner pled guilty in this Court on November 17, 2005, to the crime of illegal re-entry into the United States under 8 U.S.C. § 1326(a), with heightened punishment under 8 U.S.C. § 1326(b)(2) for illegal re-entry following deportation subsequent to conviction of a violent crime. Petitioner was then sentenced by this Court on May 5, 2006, to a term of 57 months, which was the lowest amount in the guideline range for his offense, followed by three years of supervised release, subject to various conditions.

Petitioner's claim that his constitutional rights have been violated is meritless. The transcript of Mr. Dejesus's sentencing shows that he was appropriately advised of his right to appeal, and the sworn affidavit from Mr. Dejesus's former attorney, stating that he also advised his client of his right to appeal and has no recollection of the defendant or his family

asking him to file a notice of appeal, demonstrate that Petitioner's claim has no basis in fact. Furthermore, I find that Lopez v. Gonzalez is distinguishable from the instant case because Mr. Dejesus was convicted of multiple drug trafficking offenses that are felonies under state and federal laws. Finally, this petition is not the appropriate forum for petitioner to contest calculation of his sentence, since the Bureau of Prisons is vested with the authority to calculate credit for time served. See 18 U.S.C. § 3585(b). If, after proceeding through the administrative channels set up by the BoP, petitioner still wishes to challenge calculation of his sentence, he may do so by bringing a petition pursuant to 18 U.S.C. § 2241.

Accordingly, petitioner's motion for habeas corpus is denied. Further, I deny a certificate of appealability, for there has not been a substantial showing of the denial of a constitutional right. Lozada v. United States, 107 F.3d 1011, 1016-17 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997). The Clerk shall mark the case closed.

SO ORDERED.

Dated: New York, New York
October 31, 2007


ALVIN K. HELLERSTEIN
United States District Judge